

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013070150

ORDER GRANTING MOTION TO  
DISMISS SPECIFIC CLAIMS

On July 16, 2013, Student filed a Request for Due Process Hearing (complaint) against the San Jose Unified School District (District) with the Office of Administrative Hearings (OAH). On July 26, 2013, the District filed a Motion to Dismiss Issue 15, alleging that Student's claims are outside the scope of OAH's jurisdiction. Student did not submit a response.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.).

## DISCUSSION

The District requests that OAH dismiss Issue 15, which alleges violations of Section 504 and the ADA as OAH lacks jurisdiction to adjudicate these claims. Student's claims in Issue 15 that the District violated Section 504 and the ADA are dismissed as OAH does not have jurisdiction to adjudicate these claims.

## ORDER

1. Student's claims in Issue 15 that the District violated Section 504 and the ADA are dismissed.
2. The matter will proceed as scheduled as to the remaining issues and proposed resolutions.

Dated: August 13, 2013

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings